

**OPINION
51-29**

July 30, 1951 (OPINION)

COUNTIES

RE: Compensation of States Attorney Serving on Insanity Board

In yours of the twenty-fourth instant, you ask for our opinion clarifying chapter 183 of the Laws of 1951, relating to when, if ever, the state's attorney is entitled to compensation when acting as a member of the insanity board. In this respect, chapter 183 is identical with section 25-0315. The amendment merely raised the compensation of members of the board.

The present law, chapter 183, Laws of 1951, provides a blanket compensation of ten dollars per day for members of the board with two exceptions, to-wit:

1. The county judge.
2. The state's attorney while acting as chairman of the board "if he is not already a member" of the board.

The first exception is the county judge, who is acting in an official capacity for which he is compensated by his salary. The second exception is the state's attorney. This exception operates only in the event that he is acting as chairman of the board, in which capacity he acts in the absence or inability of the county judge to act. (Section 25-0305) And, further, this exception does not operate of the state's attorney is "not already" a member of the board. That means that if the state's attorney is a member of the board and acts as chairman in the event above stated, he is entitled to his stated compensation of ten dollars a day just as he would be if he were not acting as chairman.

If the state's attorney is NOT a member of the board and is called upon to act as chairman, he is acting in an official capacity as state's attorney and his official salary covers such services.

ELMO T. CHRISTIANSON

Attorney General